

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company)	
d/b/a Ameren Illinois)	
Proposed general increase in gas)	Docket 15-0142
Delivery service rates and revisions)	
To other terms and conditions of service)	

**REPLY BRIEF OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION AND
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) and the Administrative Law Judge’s Ruling, the Illinois Competitive Energy Association (“ICEA”) and the Retail Energy Supply Association (“RESA”)¹ file this Reply Brief in this proceeding. This proceeding involves the suspended tariff filing of Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”) for a general rate increase.

I. INTRODUCTION

On September 17, 2015, ICEA and RESA filed their Initial Brief in this proceeding. Their Initial Brief was limited to the following four issues. First, ICEA and RESA recommend that Ameren’s use of a ten-day rescission period for its Rider T gas transportation customers be limited to small commercial customers. Second, ICEA and RESA recommend that Ameren’s

¹. The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

practice of sending combined bills to electric suppliers and gas suppliers be stopped and Ameren ordered to return to its previous practice of sending separate bills—electric suppliers would only receive information about electric usage and gas suppliers would only receive information about gas usage so that each supplier can utilize the Single Bill Option. Third, ICEA and RESA request that the Commission not make any finding in the instant proceeding regarding any costs that Ameren may claim to be attributable to a Small Volume Transportation (“SVT”) program. Fourth, ICEA and RESA are concerned about a worsening in Ameren’s meter reading and billing practices. ICEA and RESA request that the Commission impose certain requirements on Ameren to improve this situation.

Two other parties addressed these issues: the Commission Staff and Ameren. The Commission Staff supports ICEA’s and RESA’s positions regarding rescission periods for Ameren’s Rider T customers and combined billing. Ameren generally opposes ICEA’s and RESA’s recommendations. In this Reply Brief, ICEA and RESA will respond to the positions taken by the Commission Staff and Ameren in their Initial Briefs.

VIII. OTHER RIDER AND TARIFF CHANGES

A. RESOLVED/UNCONTESTED ISSUES

B. CONTESTED ISSUES

1. Implementation of SVT Program

In his Direct Testimony, ICEA/RESA Witness Joseph Clark requested that the Commission direct Ameren to complete implementation of the SVT Program being considered in Ill. C. C. Docket 14-0097 within nine months from the Commission’s order in that proceeding. (ICEA/RESA Ex. 1.0, pp. 14-15) Subsequently, the Commission entered its order in Docket 14-0097 and concluded that Ameren should “stop implementation of the current SVT Program, **with costs incurred to date to be reviewed in the proper forum**”. (Order in Docket

14-0097, p. 32, emphasis added) Given the Commission’s Order in Docket 14-0097, ICEA, RESA, the Commission Staff, and Ameren all agree that ICEA’s and RESA’s original request is moot. ICEA and RESA also agree with Ameren’s assertion that there are no “SVT-related issues that are ripe or appropriate for determination in this docket”. (Ameren IB, p. 128) Specifically, ICEA/RESA’s Initial Brief pointed out that Ameren has not demonstrated that any costs it has incurred in connection with an SVT Program are either prudent or necessary for an SVT program. Therefore, ICEA and RESA request that the Commission make clear in its order in the instant gas rate increase proceeding, that it is not making any determination regarding the prudence of any costs related to an Ameren SVT Program.

2. Enrollment Rescission Period for Rider T Customers

Ameren uses a ten-day rescission period—the customer, regardless of size, has ten business days from the date of the notice from Ameren to rescind enrollment in Rider T. ICEA and RESA recommend that the ten-day rescission period be limited to small commercial customers (usage of 5,000 therms or less annually). These are the non-residential customers for whom a ten-day rescission period is required by Section 19-115 (g) (7) of the Public Utilities Act.

The Commission Staff agrees with ICEA and RESA that the Commission should direct Ameren to eliminate the ten-day rescission period for Rider T customers using more than 5,000 therms annually. Staff correctly asserts that the right to an enrollment rescission without a sales rescission creates an increased risk for suppliers, because they could lock in their gas purchases and the customer could subsequently exercise its right to rescind the switch. Staff states that suppliers are likely to raise bids to customers to compensate for that risk. At the same time, depending on termination provisions in the contract, customers could be liable for payments to

the supplier and pay higher costs. Thus, while the sales contract would govern rescission effects, the ten-day rescission period will not tend to make gas markets more efficient for non-small commercial customers. Additionally, it has the potential to unnecessarily raise gas prices. (ICC Staff IB, pp. 46-47) Regarding Ameren's position that many non-small commercial customers may not be particularly large nor sophisticated, Dr. Rearden testified that enrollment rescission, the only remedy currently available to Rider T customers, does not offer the same level of protection as supply rescission. Moreover, the Illinois General Assembly did not mandate a ten-day rescission window for non-small commercial customers. It did establish a 5,000 therm threshold below which customers face different rules than customers above that level. Thus, the legislature declined to protect commercial customers using more than 5,000 therms with the ability to rescind a supply contract. In conclusion, Staff recommends that Ameren's tariffs be amended to withdraw the ten-day rescission window for Rider T customers using more than 5,000 therms. (*Id.*, p. 47)

Ameren's arguments in support of its rescission period were, for the most part, anticipated by ICEA and RESA and rebutted in their Initial Brief. Consequently, ICEA and RESA will only briefly respond to Ameren's Initial Brief on this matter.

In support of retaining Ameren's rescission period practice, Ameren states that ICEA/RESA's proposal "would leave many non-residential customers with little to no remedy to correct a mistaken switch". (Ameren IB, p. 131) However, this is not true. If an enrollment is mistaken, the switch can always be reversed, even beyond Ameren's ten-day period. (ICEA/RESA Ex. 2.0, p. 3) A customer whose switch was unauthorized can always reverse the switch. Both Section 2DDD of the Consumer Fraud and Deceptive Business Practices Act and Section 19-115 (c) of the Public Utilities Act set forth requirements for a lawful switch of a

customer's gas service provider. Any switch which does not comply with those requirements is invalid and does not bind the customer.

Ameren also implies that ICEA and RESA do not know the difference between an enrollment rescission and a supply rescission. (Ameren IB, pp. 132-133) ICEA and RESA understand the difference, but it is Ameren that does not appear to understand that it is a difference without a distinction. The enrollment rescission leaves the supplier with no opportunity to provide the customer with gas under the underlying supply contract. There are serious consequences with Ameren's allowing larger commercial customers to have the same rescission period as that statutorily mandated for residential and small commercial customers. Typically, larger customers have a trigger clause if they lock in their price, allowing the supplier and the customer to work together to purchase gas at a given point in the market. The ten-day rescission period does not begin until an enrollment is sent; however, a supplier must secure supply to be ready to serve on the day the contract is executed and cannot wait for the ten days to end before incurring costs for large amounts of gas. If the customer rescinds, the supplier will have incurred costs for the gas purchased. Moreover, in the case of very large transportation customers, there could be a cost of potentially millions of dollars for a single rescission. (ICEA/RESA Ex. 2.0, pp. 5-6)

Ameren assumes that the supply contract "could presumably contain language addressing the concerns expressed by ICEA/RESA". (Ameren IB, p. 133) However, there is no basis for Ameren's assumption. A supply contract may or not contain a liquidated damages clause or early termination provision. Even if it did, bringing suit in state court to enforce a liquidated damages or early termination provision simply adds risk that increases prices. Moreover, even if the supply contract contained a liquidated damages clause or an early termination provision

which made the supplier “whole”, the supplier still has an obligation for what potentially may be a large amount of natural gas supply for a long period of time that it needs to dispose of in the market. (ICEA/RESA Ex. 2.0, p. 4)

Ameren also raised concerns about Ameren’s ability to identify small commercial customers eligible for the statutory rescission period. (Ameren IB, p. 133-134) However, ICEA and RESA offered a suggestion to mitigate this concern, a solution that would require no additional programming. Ameren can simply add language to the letter it sends to customers informing them of their enrollment and rescission options, indicating that the rescission period only applies to customers with annual usage of 5,000 therms or less. In fact, Commonwealth Edison Company (“ComEd”) had a similar issue on the electric side and simply changed the language of its enrollment/rescission letter. (An example of the ComEd letter was admitted into evidence as ICEA/RESA Ex. 2.1.) Like the ComEd letter, the revised Ameren letter could remind the customer that there may be ramifications to rescission if the customer is not covered by the statutory rescission right. It is a safe assumption that changing the verbiage in the enrollment/rescission letter would be simpler and a fraction of the cost of programming changes for Ameren’s information technology systems. (ICEA/RESA Ex. 2.0, pp. 4-5)

In response to ICEA/RESA’s suggested solution, Ameren claims that unlike the 5,000 therm limitation on the gas side, the 15,000 kWh limitation on the electric side is a “hard cap”. (*Id.*, p. 133) However, that is not the case. In order to determine small commercial customer status on the electric side, it is necessary to group accounts. Also, a customer’s usage could vary above and below the 15,000 kWh ceiling from year to year.

Ameren suggests that ICEA and RESA’s recommendation is a “solution in search of a problem”. However, it is Ameren that created a problem. Ameren operated for years without

finding a need to expand the rescission period to Rider T customers who are not small commercial customers. The Public Utilities Act was amended to add the ten-day rescission period for residential and small commercial customers in 2009; however, Ameren did not revise its tariff to expand the rescission period to larger Rider T customers until 2013. (ICEA/RESA Ex. 2.0, pp. 6-7) Thus, it appears that Ameren's revision in 2013 was the "solution in search of a problem".

Ameren's argument that ICEA and RESA cannot provide any specific examples of a non-residential customer gaming the ten-day rescission period (Ameren IB, pp. 134-135) misses the point. The fact that a customer could game the system in this way harms the market. Even if customers have not taken advantage of market swings, the mere fact that a customer is explicitly empowered to take such action under Ameren's Rider T creates an unnecessary risk for gas suppliers. In turn, gas suppliers need to reflect this unnecessary risk in their pricing. Of course, the more market volatility in the price of natural gas, the greater the risk of customers rescinding agreements with a supplier to take advantage of changing gas prices. (ICEA/RESA Ex. 2.0, p 7)

Ameren also claims that "suppliers might actually benefit from AIC's current practices" in that they might be able to sell gas purchased for a customer who subsequent rescinds its enrollment for a profit. (Ameren IB, p. 135) The obvious answer to this hypothetical benefit is that if it had any basis, suppliers would not be requesting that Ameren be ordered to limit the 10-day rescission period in Rider T to small commercial customers.

Ameren provides examples of types of customers that might have usage in excess of 5,000 therms annually, and thus are not small commercial customers but are not sophisticated enough to "game the system". (Ameren IB, p. 129) However, Ameren's practice creates a problem for such customers. If they are unsophisticated, they may not "game the system".

However, they also may not understand the difference between the rescission of the enrollment and rescission of the supply contract. They may think that by rescinding the enrollment, they have also rescinded the underlying supply contract without consequence. Thus, they may expose themselves to an early termination fee or a liquidated damages provision. (ICEA/RESA Ex. 2.0, pp. 7-8)

In summary, ICEA, RESA, and the Commission Staff all agree that Ameren should be required to limit the ten-day rescission period to small commercial customers. That rescission period should be removed for Rider T customers who are not small commercial customers.

3. Combined Billing Practices for Electric and Gas Customers

Previously, if an Ameren customer were buying gas supply from a gas supplier and electric supply from an electric supplier and both of those suppliers were billing the customer using SBO, Ameren would send the bill for its gas utility charges to the gas supplier and the bill for its electric utility charges to the electric supplier. The gas supplier would then send the customer a single bill, including Ameren's charges and its own charges. Similarly, the electric supplier would send the customer a single bill, including Ameren's charges and its own charges. (ICEA/RESA Ex. 1.0, p. 9) In other words, each supplier would use the Single Bill Option ("SBO").

However, Ameren changed this practice and will only send its gas and electric utility charges to one of the suppliers, the supplier designated by the customer as the Billing Agent. This results in a customer only being able to choose its gas supplier or electric supplier for a combined bill, but not two separate consolidated bills for the separate commodities. (*Id.*)

Staff asserts that Ameren is not responding to ICEA and RESA's concern regarding its change in billing practice. ICEA and RESA are objecting to Ameren's policy that a customer cannot choose to use SBO for both gas and electric service and receive one bill for its gas supply and distribution charges and one bill for its electric supply and distribution charges. Ameren, however, discusses how it determines which entity is the customer's Billing Agent, which then provides a bill for both services. Staff concludes that customers should be able to choose who provides their bill. As long as the cost is not excessive, if customers want a separate bill for gas and electric service from each supplier, then it should be able to receive two separate bills. (ICC Staff IB, pp. 47-48) There is no evidence in the record that the cost of reverting to Ameren's former billing practice would be "excessive".

Ameren's Initial Brief claims that both "electric and gas suppliers are able to include the Company's delivery service charges on their bills". (Ameren IB, p. 138) However, this is not the case as confirmed by Ameren's response to RESA Data Request No. 3.06 (c), which was included in ICEA/RESA Group Ex. 4.0 admitted into evidence:

RESA Data Request 3.06

Regarding Mr. Millburg's testimony on the combined billing issue, please explain Ameren's billing process for the following scenarios for a customer taking gas and electric distribution service from Ameren...

(c) The customer is served by different electric and gas suppliers who each utilize the single billing option and the electric supplier is designated as the Customer's Billing Agent.

Ameren Response: The electric supplier receives the Company's electric delivery service charges, taxes and late payment charges, if any, via EDI transaction. Electric non-service charges and any past-due electric charges from prior periods, whether the customer received Company or third party electric supply service during those prior periods would be mailed to the electric supplier.

The electric supplier will be mailed the customer's gas delivery service charges, taxes, gas non-service billing items, any late payment charges and any past-due charges from prior periods for gas service.

The gas supplier will receive no billing or usage information since they have not been designated by the customer as their Account Agent. (emphasis added)

Ameren also states that ICEA and RESA “have failed to identify a funding source for the incremental costs associated with their recommendation”. (Ameren IB, p. 137) However, Ameren has not put in any evidence regarding what such incremental costs, if any, would be. Moreover, this is the case despite the fact that Staff Witness Dr. Rearden recommended, in his Rebuttal Testimony, that Ameren be required to send separate bills “[a]s long as the cost is not excessive”. (Staff Ex. 13.0, p. 8) Ameren had an opportunity to address the costs of ICEA/RESA’s proposal in its sur-rebuttal testimony, but did not do so.

In conclusion, ICEA, RESA, and the Commission Staff agree. The Commission should require Ameren to make the single bill option available for both commodities separately for Rider T customers.

4. Meter Reading and Billing Practices for Rider T Customers

The Commission Staff asserts that ICEA’s and RESA’s recommendations regarding meter reading and billing are not “ripe” for the Commission’s consideration. (Staff IB, p. 49) Ameren agrees. (Ameren IB, p. 144) ICEA and RESA disagree. They have pointed out specific problems that need to be remedied and have proposed solutions to those problems.

First, due to the transfer of the responsibility for meter reading and billing from Ameren’s End User Transportation Group, with whom gas suppliers have traditionally interacted, to Ameren’s Customer Accounts Department (“CAD”), there has been a deterioration in Ameren’s meter reading and billing. While final information for billing used to be available by the 8th day of the month, currently, final information is not available until the 15th business day of the month or later for natural gas pooling customers. The fact that suppliers are not getting meter reads on a

timely basis creates burdens for both the supplier and the customer. The supplier is unable to bill customers in a timely fashion and unable to close its books. (ICEA/RESA Ex. 1.0, pp. 13-14)

Moreover, contrary to Ameren's claims, delays in transmitting final billing date are not related to the size of the balancing group. ICEA's and RESA's members experience delays even for balancing groups with small groups of customers. ICEA and RESA members have not found a consistent reason why Ameren is consistently late. The reasons seem to vary and a pattern has yet to emerge. (ICEA/RESA Ex. 2.0, p. 10)

Second, contrary to Ameren's claims, problems related to difficulty in identifying "normal" usage from "revised" usage are not attributable to suppliers' failure to read Ameren's handbook. In fact, at times even Ameren employees are stumped as to why Ameren's usage reports don't tie to storage reports in Ameren's systems. (*Id.*)

In conclusion, issues related to Ameren's meter reading and billing practices are within the scope of this proceeding and ripe for Commission action. Specifically, ICEA and RESA request the following. First, ICEA and RESA request that the Commission establish a firm date on final usage--the fifth business day of the month. Second, RESA requests that the Commission direct Ameren to provide a standard notice, other than the invoice itself, for usage revisions. The information on the invoice is not sufficient for suppliers to update their systems, nor is it timely enough to correct usage issues. Third, any time there is a volume changed to a closed invoice (volume or dollars), Ameren should be required by the Commission to notify a designated contact at the supplier.

X. CONCLUSION

In conclusion, ICEA and RESA request the following. First, the Commission should direct Ameren to limit the use of a ten-day rescission period in Rider T to small commercial customers. Second, ICEA and RESA recommend that Ameren's practice of sending combined bills to electric suppliers and gas suppliers be stopped and Ameren ordered to return to its previous practice of sending separate bills—electric suppliers would only receive information about electric usage and gas suppliers would only receive information about gas usage. Third, ICEA and RESA request that the Commission not make any finding in the instant proceeding regarding any costs that Ameren may claim to be attributable to an SVT program. Fourth, ICEA and RESA request the following to address the deterioration in Ameren's meter reading and billing practices.

- First, ICEA and RESA request that the Commission establish a firm date on final usage--the fifth business day of the month.
- Second, RESA requests that the Commission direct Ameren to provide a standard notice, other than the invoice itself, for usage revisions. The information on the invoice is not sufficient for suppliers to update their systems, nor is it timely enough to correct usage issues.
- Third, any time there is a volume changed to a closed invoice (volume or dollars), Ameren should be required by the Commission to notify a designated contact at the supplier.

Respectfully submitted,

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NOTICE OF FILING

Please take note that on October 1, 2015, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply Brief of the Illinois Competitive Energy Association and the Retail Energy Supply Association in this proceeding.

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Reply Brief of the Illinois Competitive Energy Association and the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 15-0142 via electronic delivery on October 1, 2015.

/s/ GERARD T. FOX
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